



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Mr. Roland Castaneda
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75206-0163

OR98-2601

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119537

The Dallas Area Rapid Transit ("DART") received a request for DART contract no. C-97000052 and the last negotiated Form 60.¹ You submit a letter dated March 24, 1998 from Mr. Michael R. Snipes, Assistant United States Attorney, addressed to Mr. Ted Steinke, apparently a DART representative, referencing *United States v. Monica Witt, et al.* CR3-98-103-P, requesting that Mr. Steinke not disclose documents in the possession of DART that are relevant to the government's prosecution of the Witt case. Mr. Snipes states, "such disclosure could compromise the government's ability to prosecute the case. I specifically request that you not disclose any documents related in any way to either Ms. Witt or her co-defendant, Taiwo Anthony Oyekan."

You contend that the responsive documents contained in Attachment D are excepted from public disclosure because they are considered to be confidential by law, either constitutional, statutory, or by judicial decision. You raise no law that would deem the requested information confidential. You argue that the act does not apply to information within the constructive possession of grand juries because section 552.003 excludes grand juries from the act's definition of a "governmental body." You refer to Open Records Decision No. 513 (1988) in support of your position that the requested information is protected from disclosure. We have considered the exception you claim and reviewed the submitted information.


¹ We are unable to determine which document or documents in Attachment D are the "last negotiated Form 60." We presume, however, that the information that you submitted is the requested information or a representative sample of the requested information.

Open Records Decision No. 513 (1988) concluded that information is not excepted from public disclosure, either as a record of the judiciary, *see* Gov't Code § 552.003(b), or as information deemed confidential under article 20.02 of the Code of Criminal Procedure, which makes confidential information revealing the substance of grand jury deliberations, merely because the information was presented to the grand jury. Information gathered by a district attorney independently of any request or direction of the grand jury, even where that information was subsequently submitted to the grand jury, may not be withheld from the public under the judicial exception found at section 552.003(b) or under the confidentiality provision found at article 20.02 of the Code of Criminal Procedure. Open Records Decision No. 513 (1988).

In this instance, the United States Attorney has advised that disclosure of the requested information would compromise the government's ability to prosecute the case. The need of a governmental body, other than the body that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Record Decision 586 (1991). We therefore conclude that you may withhold the requested records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/nc

Ref.: ID# 119537

Enclosures: Submitted documents

cc: Ms. Deola Oresanya
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(w/o enclosures)